

WEBINAR WEDNESDAYS



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International Extraditions

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Speedy Trial Violations Case Law Within the Extradition Process

Standard for Speedy Trial Violations:

- ***Barker v. Wingo*, 407 U.S. 514 (1972)**
 - This case set forth a four-factor balancing test to determine whether a defendant's constitutional speedy trial rights have been violated.
 - Under the *Barker* test, courts balance, in light of the facts and circumstances of the particular case:
 - **(1) the length of the delay**
 - This factor involves a two-fold inquiry. First, a court will decide whether the delay was presumptively prejudicial. If it was, then the court will balance the length of the delay against the remaining three factors (i.e., a presumptively prejudicial delay triggers analysis of the remaining three factors)
 - According to *Doggett v. U.S.*, 505 U.S. 647 (1992), a delay is presumptively prejudicial if it approaches one year
 - **(2) the reasons for the delay**
 - This factor is often the crux of the analysis
 - A defendant cannot obtain a dismissal of an indictment when the delay is due to the defendant's own evasion of government efforts to bring him into the jurisdiction. *State v. Kutkut*, No. 98479, 2013 WL 1461989 (Ohio Ct. App. 2013)
 - A defendant's claim that the government violated his/her right to a speedy trial is seriously undermined when the defendant, and not the government, is the cause of the delay. *U.S. v. Blanco*, 861 F.2d 773 (2d Cir. 1988)
 - There is no speedy trial violation when the reasons for the delay were voluminous defense motions and the unavailability of the defendant due to his charges in another state. *State v. Gretzler*, 612 P.2d 1023 (Ariz. 1980).
 - The State/Government has an obligation to exercise due diligence in attempting to locate and apprehend the accused, even if he is a fugitive who is fleeing prosecution. However, whether the State/Government has made sufficient efforts is a fact-specific inquiry, and law enforcement is not expected to make heroic efforts to apprehend a defendant who is purposefully avoid apprehension or has fled to parts unknown. *State v. Kutkut*, No. 98479, 2013 WL 1461989 (Ohio Ct. App. 2013)
 - **(3) the defendant's assertion of his/her right to a speedy trial**
 - **(4) the prejudice to the defendant**
 - There are three interests which may be prejudiced by an excessive delay:
 - (1) preventing oppressive pretrial incarceration

- (2) minimizing anxiety and concern
- (3) limiting the possibility that delay will impair the defense (most important of the three interests)
- The burden is on the State/Government to establish that the *Barker* factors do not support dismissal

Cases Where Courts Have Dismissed Cases Due to State/Government's Lack of Diligence (all cases involve extraditions):

- *People v. Romeo*, 904 N.E.2d 802 (N.Y. 2009)
 - Facts: Defendant shot someone in New York, fled to Canada, and then shot a police officer in Canada. New York indicted defendant, but then permitted defendant to be tried in Canada first. Defendant was convicted, sentenced, and imprisoned in Canada. New York never sought extradition. Then, 12 years after the New York indictment, the defendant moved for dismissal, which the court denied. The defendant was eventually transferred to New York, where he pled guilty and was sentenced. He appealed, asserting that the 19-year post-indictment delay deprived him of a speedy trial.
 - Holding: The prejudice caused by the post-indictment delay, as a result of the State's decision to allow defendant to be tried in Canada first and the subsequent decision not to seek defendant's extradition to New York violated the defendant's constitutional right to a speedy trial
 - Failing to make an extradition request has been one factor that courts have viewed as evidencing a lack of diligent efforts on the part of the prosecution in bringing the defendant to trial promptly
 - Case analyzed under New York's version of the *Barker* factors
- *State v. Ross*, 441 P.3d 1254 (Wash. Ct. App. 2019)
 - Facts: Washington charged the defendant with murder in 1978 but didn't pursue prosecution for over 38 years. State allowed the defendant to be extradited to Canada for trial on another murder charge without ensuring that he would be returned for trial in Washington. While defendant was incarcerated in Canada, Washington made no meaningful effort to obtain his return to the United States for decades.
 - Holding: The 38-year delay between the defendant's arrest and first appearance in the trial was presumptively prejudicial, triggering *Barker* inquiry, and the defendant's right to speedy trial was violated by that delay
 - The court rejected the prosecution's argument that there was no speedy trial violation because the delay was primarily attributable to the defendant. *Barker* made clear that the primary burden falls on the courts and the prosecution to assure cases are brought to trial. A defendant has no duty to bring himself to trial.
- *U.S. v. Packer*, 857 F. Supp. 726 (C.D. Cal. 1994)
 - Facts: Defendant was charged with both federal and state crimes arising from incidents in California (indicted by federal government on 6/30/1987). Defendant was initially a fugitive, but he was arrested in Florida a few months

after his federal indictment (arrested 10/26/1987). Since the state charges were more serious, the federal government released the defendant to the State, so the state charges could be prosecuted first. The federal government dismissed its initial indictment without prejudice, but then filed a superseding indictment (filed on 12/10/1987) and failed to notify the defendant of the superseding indictment until his federal arraignment in March 1993. The federal government failed to ask state authorities to return the defendant for his federal prosecution.

- Holding: The court found that all *Barker* factors favored dismissing the indictment. Notably, the 4-year delay attributable to the Government's negligent failure to ask the State to return the defendant created a presumption of prejudice sufficient to excuse the defendant from needing to make a showing of actual prejudice.
- *State v. Palacio*, 212 P.3d 1148 (N.M. Ct. App. 2009)
 - Facts: Defendant was indicted on 8/28/1998 in New Mexico. He then fled to Texas and was eventually arrested and incarcerated there. New Mexico lodged a retainer against the defendant and sent it to Texas, but then never followed up. When defendant was about to be released and paroled in Texas in 2000, his caseworker tried to contact New Mexico multiple times, but New Mexico failed to act. Defendant was arrested again in Texas in 2004 and held without bail because of the New Mexico retainer, but Defendant was released and informed that New Mexico dropped the retainer. Defendant was finally transferred to New Mexico in 2007 for the 1998 indictment.
 - Holding: A 9-year delay between the indictment for embezzlement and hearing on the defendant's speedy trial motion violated the defendant's right to speedy trial, because 7 years of delay was attributable to state's bureaucratic indifference after the defendant fled the state.
 - Court applied *Barker* factors